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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,152	01/21/2004	Dean Larry DuVal	9496	4966

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER	
GRAVINI, STEPHEN MICHAEL	
ART UNIT	**PAPER NUMBER**
3749	

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/762,152	DUVAL ET AL.	
	Examiner	Art Unit	
	Stephen Gravini	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *09 January 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-37* is/are pending in the application.

4a) Of the above claim(s) *1-6,19-31,33 and 37* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *7-18,32 and 34-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) *1-6,19-31,33 and 37* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-6 & 37, drawn to a product composition, classified in class 510, subclass 276.

II. Claims 7-18, 32, & 34-45, drawn to a method subcombination, classified in class 34, subclass 343.

III. Claims 19-31 & 33, drawn to a method subcombination, classified in class 34, subclass 380.

The inventions are distinct, each from the other because of the following reasons:

Inventions of group I and groups II & III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the independently claimed group I invention recites details of a product composition including composition weight and a treatment material limited to a material group, which can be used in a materially different process of using that product because that product is not limited to the independently claimed monitoring, applying, or drying found in independently claimed groups II & III.

Inventions of group II and group III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each

other if they are shown to be separately usable. In the instant case, invention of group II has separate utility such as being limited to a drying cycle while the independently claimed group III invention is limited to an operation cycle. Both cycles, operation and drying, are considered separately usable because drying is normally associated with removing moisture from an article while an operation may involve moistening with the claimed perfume or treatment material.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant's election with traverse of group II claims 7-18, 32, and 34-35 in the reply filed on January 9, 2006 is acknowledged. The traversal is on the grounds that group II and group III claims 19-31, 31, and 33 are interrelated and could be searched without a serious burden. This is not found persuasive because applicants have submitted more than one hundred prior art references and each of those independent and distinct group of inventions must be distinguished among thousands of prior art references necessary to perform a thorough search. Because group II invention independently claims a temperature factor while group II invention independently claims time factor, it is a serious burden upon the Office to patentably distinguish both inventions.

The requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

Applicants have submitted more than one hundred prior art references without guiding examination as to the most relevant art under current Office practice. It is recommended to highlight those references most pertinent to the claimed invention. Please see MPEP section 2004.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Both of those claims recite an open ended temperature limit which may be construed as indefinite, which fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Please see MPEP section 2173.05(c).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Joshi (US 6,220,267). Joshi is considered to disclose the claimed invention comprising:

monitoring an operating temperature of a drying apparatus during a drying cycle of said drying apparatus at column 7 line 21 through column 8 line 16; and

applying a fabric treatment composition comprising a perfume and a treatment material to a fabric article during said drying cycle of said drying apparatus, said application occurring after said drying apparatus has reached a first control operating temperature at column 8 line 17 through column 10 line 22.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 8-18, 32, and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Joshi. Joshi is considered to disclose the claimed invention, as rejected above, except for the claimed temperatures, claimed duration, and claimed weight percent. It would have been an obvious matter of design choice to provide ranges of temperature, duration, or weight percent, since the teachings of the prior art

would perform the claimed invention regardless of the temperature, duration, or weight percent ranges.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 7-18, 32, and 34-35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of US Patent No. 6,840,069. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented lipophilic fluid vapor can be broadly and reasonably construed to be a genus to the species of perfume claimed in the present invention. It would have been obvious to one skilled in the art to recite a species for patent protection whereas the genus is considered an obvious variation.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMG
February 17, 2006

Stephen Gravini